UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MYUN-UK CHOI, JIN-HO JUNG, SUNG-HUN JUNG, SUNG-HEE LEE, and KYUNG-SUB LEE, *Individually and on Behalf of All Others Similarly Situated*,
 	
        Plaintiffs,
 	
v.
 	
TOWER RESEARCH CAPITAL LLC and MARK GORTON,
 	
        Defendants.
	No. 14-cv-9912 (KMW)

DECLARATION OF MARC VESECKY

I, Marc Vesecky, declare under penalty of perjury that the foregoing is true and correct:

1.   I am the Chief Risk Officer and Chief Investment Officer at Tower Research Capital LLC ("Tower"). I am familiar with the facts and circumstances set forth in this Declaration.

2.   I understand that the parties have submitted competing proposed addenda to the Protective Order entered on May 15, 2015.[1] I have reviewed the proposed addenda. *See* Declaration of Times Wang (Dkt. 75), Exs. 1-2 (Dkt. 75-1 to 75-2). I submit this Declaration in support of Tower's proposed addendum. *Id.*, Ex. 2 (Dkt. 75-2).

3.   Through my education, training, and professional experience, I am familiar with the technical specifications required to access and maintain the confidentiality of information included within the Protective Order's definition of Source Code.[2]

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[1] The term "Protective Order" refers to the Stipulated Protective Order for Disclosure and Use of Discovery Materials, Dkt. 31.

[2] All capitalized terms in this Declaration have the same meaning as set forth in the Protective Order, unless otherwise noted.

4.   Tower is a proprietary trading firm. Tower's Source Code, which is highly confidential and proprietary, is developed within Tower's trading teams and other departments. Tower has made substantial investments, including tens of millions of dollars and years' worth of research by multiple PhD-level research teams, to identify and refine its trading strategies, techniques, and technology.

5.   Based on my experience and understanding of Tower's business, Tower's Source Code is the foundation of Tower's success. Source Code gives Tower a competitive advantage in predicting future prices and executing the most profitable trades as quickly as possible, and therefore constitutes highly valuable intellectual property. As a firm with a quantitative focus, Tower's competitive position depends heavily on both the development and secrecy of its Source Code. If any portion of Source Code were disseminated or disclosed, it would cause serious risk of competitive injury to Tower, potentially compromising Tower's highly valuable trading strategies and technology by making them known to competitors or others who would use them. This loss of Tower's competitive position would be especially acute by virtue of the nature of algorithmic high-frequency trading. Tower competes in a highly specialized, highly competitive space in which the development of technological edges gives Tower competitive advantages that can result in gains or losses of millions of dollars annually. Accordingly, should one of Tower's (equally specialized) competitors gain knowledge of or access to Source Code, the value created by Tower's years of designing, developing, and refining these trade secrets would dissipate almost instantly.

6.   Because Tower may never know precisely how disclosed Source Code may be shared or integrated into competitors' own investment strategies, the loss of Tower's Source

Code would be irreparable because it would be difficult to calculate monetary compensation that would accurately redress such indeterminate, pervasive, and potentially long-lasting damage.

7.   One of my primary responsibilities as Chief Risk Officer of Tower is to preserve the secrecy of Source Code. I thus work closely with our Chief Technology Officer, trading teams, information security specialists, and other Tower employees and agents to ensure that Tower maintains complete control over who may access Source Code and through what means.

8.   Tower takes significant measures to keep Source Code secret and confidential, even within Tower itself. In order to maintain such secrecy, for example, Tower:

a.   prohibits employees from copying, emailing, or otherwise transferring Source Code to unauthorized devices or locations;

b.   prohibits employees from establishing a connection to any Tower system, network, or device, or enabling any function without proper authorization;

c.   implements comprehensive cyber-security measures to prevent unauthorized access and connections to Tower systems;

d.   restricts access to each Tower trading team's files only to personnel within that team, and thus restricts all Tower employees from accessing documents or information, including Source Code, belonging to another Tower trading team;

e.   limits access of Tower networks to only those employees and vendors with a need for access, and limits the individuals with administrative and domain privileges to only a select group;

f.   requires supervisors to manage and approve access to different Source Code repositories, and to keep access and user IDs for all Tower systems up to date;

g. requires employees to create unique IDs and passwords to access to all Tower

systems and networks; and

h. conducts training and issues an internal compliance manual, internal policies, and

compliance bulletins reminding employees to protect the confidentiality of

Tower's proprietary information, and warning that unauthorized use or

distribution of such information would violate Firm policy and possibly the law.

9.   Unless it is required to do so by law or court order, or there is an extremely

compelling business, technical, or regulatory need, Tower never provides access to Source Code

or electronic copies of Source Code to persons who are not employed by Tower.

10.   Allowing the creation, retention, and transfer of electronic copies of Source Code

would cause serious risk of competitive harm to Tower because it would greatly increase the

chances of inadvertent disclosure. Tower prohibits even its own employees from copying or

transferring Source Code because such conduct makes unauthorized access exponentially more

likely, regardless of the intent of the copying party. Tower prohibits unauthorized connections

by its own employees for the same reason.

11.   I understand that Tower has proposed to prohibit the use of compilers,

interpreters, and simulators during inspections of Source Code. Installation of compilers,

interpreters, and simulators would allow Plaintiffs' representatives to translate Source Code text

into an actual software program. That means, technically speaking, they would be able not just

to review, but to run and test the performance of Tower's source code and algorithms that

execute trades in Korean futures contracts. This information is proprietary and extremely

sensitive. No compiler, interpreter, or simulator is needed to determine the signals, thresholds,

or events that trigger the order placement or cancellation logic in the Source Code. Moreover,

there is no need to test how Tower's algorithms would have behaved during the relevant period because Tower maintains records of its trading and the market data its algorithms consume.

12.   Tower develops its Source Code through an iterative process that requires constant refinement and revision. Thus, documents and information concerning the evolution of Tower's Source Code over time can be leveraged to dramatically undermine Tower's financial success. Therefore, Tower keeps all Source Code secure and confidential, whether particular portions are currently in use or not.

13.   I understand that Tower has proposed to locate the Reviewing Computer at the offices of Tower's Outside Counsel in New York City or Washington, D.C. Based on the highly sensitive nature of Tower's Source Code and the critical security measures required to protect it, locating the Reviewing Computer in one of these two offices is necessary to ensure the proper technological support during the inspection process. For the same reasons, Tower's control over the software installed on the Reviewing Computer is critical to ensuring no means exist for connecting to the Reviewing Computer or copying or manipulating Source Code.

Dated: August 3, 2018   By: _____
       New York, New York   Marc Vesecky